

Douglas
Minter/P2/R8/USEPA/US
03/14/2007 10:17 AM

To "Anderson, Carl J." <cjanders@nd.gov>
cc
bcc
Subject RE: MOA Changes

Carl - since we had not heard back from you, I just wanted to make sure that it was on your radar screen. There's certainly no deadline, and given that EPA "sat" on this PPA commitment for quite awhile before we gave you comments, I don't want to give the impression that it has to be done ASAP. When you do get to it, do let me know when you anticipate sign off, etc.

Thanks and good luck getting in your vacation!

Douglas Minter, MPH
UIC Class V Team Leader
PH: (303) 312-6079
FAX: (303) 312-7084

New Mailing Address Effective January 16, 2007:

USEPA Region 8 (8P-W-GW)
1595 Wynkoop Street
Denver, CO 80202-1129
"Anderson, Carl J." <cjanders@nd.gov>



"Anderson, Carl J."
<cjanders@nd.gov>
03/14/2007 08:04 AM

To Douglas Minter/P2/R8/USEPA/US@EPA
cc
Subject RE: MOA Changes

Douglas,

I received your email regarding the MOA changes. I don't see a problem making the changes, but will need to get approval from Dennis Fewless and Dave Glatt. The other change that will need to be made is to add Dave Glatt as the Chief of the Environmental Health Section. Is there any timeframe that we need to meet. I'm pretty much swamped until the first week of April with a large sampling project and a short vacation (I hope).

Let me know if we can get on this the first week of April, or give me a call to discuss. I'll be in and out the rest of this week and out all next week and the following week.

Carl
701-328-5213

-----Original Message-----

From: Minter.Douglas@epamail.epa.gov
[mailto:Minter.Douglas@epamail.epa.gov]
Sent: Tuesday, March 13, 2007 10:50 AM
To: Anderson, Carl J.

Subject: MOA Changes

Hi Carl - attached is your MOA with a few comments we provided to you. Our sense was that these needed to be addressed before our agencies could sign off on this newer version. Could you let me know if/when you plan to make these changes and finalize the document?

(See attached file: ND1422MOA.EPAfinalcomments.doc)

Thanks,

Douglas Minter, MPH
UIC Class V Team Leader
PH: (303) 312-6079
FAX: (303) 312-7084

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USEPA Region 8 (8P-W-GW)
1595 Wynkoop Street
Denver, CO 80202-1129

UNDERGROUND INJECTION CONTROL PROGRAM
MEMORANDUM OF AGREEMENT
BETWEEN
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

I. INTRODUCTION

The North Dakota Department of Health, Division of Water Quality (hereinafter Department) and the United States Environmental Protection Agency, Region 8 (hereinafter EPA or Regional Administrator) have entered into this Memorandum of Agreement (MOA) to delineate the responsibilities of each agency for the ongoing operation of the Underground Injection Control (UIC) Program for Class I, III, IV, and V injection wells, as described in Part C of the Safe Drinking Water Act (Public Law 93-523 as amended by Public Law 95-190 and 96-502). The Agreement establishes policies, responsibilities, and procedures pursuant to 40 CFR Parts 124, 144-148 for the State of North Dakota UIC program. The Agreement specifies areas of cooperation, standards of performance, and guidelines for the achievement of the goals set forth in the Safe Drinking Water Act (SDWA). This Agreement shall become effective when signed by the Chief of the Environmental Health Section, the Director of the Water Quality Division and the Regional Administrator of the EPA.

II. POLICIES AND AGREEMENTS

A. Agency Responsibilities

The Department will receive the annual program grant for Class I, III, IV, and V activities and shall coordinate the UIC program to facilitate communication between EPA and the other state agencies having program responsibilities. The Industrial Commission acting through the Oil and Gas Division has authority over all Class II injection wells and receive a separate grant from EPA. The Industrial Commission acting through the North Dakota Geological Survey (hereinafter NDGS) has authority over all Class III injection wells and the Department has authority over all Class I, IV, and V injection wells. Each state agency is responsible for administering the state program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring, compliance, and enforcement actions.

The Department shall assure the equitable and efficient distribution of the UIC grant funds through memorandums of agreement to the participating agencies.

B. Review and Modification

This Agreement shall be reviewed annually as part of the annual program grant and State/EPA Performance Partnership Agreement (PPA) process. The annual program

grant and the PPA shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of the Department or EPA. Modifications must be in writing and must be signed by the Chief of the Environmental Health Section, Director of Water Quality, and the Regional Administrator. Modifications become effective when approved by the Regional Administrator.

C. Conformance with Laws and Regulations

The Department shall administer the UIC program consistent with the state's submission for program approval, program description, this MOA, the SDWA, current federal policies and regulations, promulgated minimum requirements, priorities established as part of the annually approved state UIC grant, and any separate working agreements which shall be entered into with the Regional Administrator as necessary for the full administration of UIC program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Department and EPA staffs to assure successful and efficient administration of the UIC program. In this partnership, the Regional Administrator will provide the Department with technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Department apprised of the meaning and content of federal guidelines, technical standards, regulations, policy decision, directives and any other factors which affect the UIC program.

The Department commits to carry out the UIC program as outlined in the state's primacy application and subsequent modifications to assume UIC primacy. The Department will carry out the UIC program as outlined in the state's program description, the annual PPA, or in subsequent working agreement to assume UIC program primacy.

It shall be the policy of the EPA and the Department to minimize paperwork and interagency decision-making procedures and to make the best use of available manpower and funds so as to prevent duplication of effort and unnecessary delays.

E. Sharing of Information

Consistent with 40 CFR Part 145.32(a), the Department shall promptly inform EPA of any proposed modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the UIC program and the Department's or the NDGS's authority to administer the program. The Department shall promptly inform EPA of any resource allocation changes which might affect the state's ability to administer the program.

Deleted: The

Deleted: or enacted

Any information obtained or used by the Department or the NDGS under the UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department must submit the claim to EPA when providing EPA such information. Any information obtained from the state and subject to a claim of confidentiality will be treated in accordance with 40 CFR, Part 2 and 40 CFR, Part 144.5. The EPA shall furnish to the Department the information in its files which the Department needs to implement the state program. Information submitted to EPA under a claim of confidentiality shall be subject to EPA regulations governing confidentiality (40 CFR, Part 2) and federal provisions governing data transfer.

F. Duty to Revise Program

Within two hundred seventy (270) days of any amendment to any regulation promulgated under 40 CFR Parts 124, 144, 145, 146, 147, or 148 the Department shall submit notice to EPA showing that the state program meets any revised or added requirement.

G. General Provisions

Nothing in this agreement is intended to affect any UIC program requirement, including any standards or prohibitions, established by the Department, the NDGS, or local law as long as the state or local requirements are not less stringent than:

1. Any set forth in the UIC regulations, and;
2. Other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431, or other sections of the SDWA.

III. PERMITTING

A. General

The Department and the NDGS are responsible for all permitting procedures as detailed in the state's primacy package, in the current UIC program description, and pursuant to state and federal laws, rules, and regulations.

Permits for Class III wells will be issued under the authority of both Chapter 61-28 and Chapter 38-12 of the North Dakota Century Code (NDCC). Class III permits will be issued by the state geologist and co-signed by the North Dakota Department of Health, Division of Water Quality.

B. Consolidation of Permit Issuance

The Department and EPA may agree on provisions for joint processing of permits for facilities or activities which require permits from both EPA and the Department under different programs. The Department and EPA may consolidate draft permits, fact sheets, public comment periods, and any public hearings on those permits which are jointly processed. The Department shall not, however, proceed with joint processing of permits if this would result in unreasonable delay in the issuance of one or more permits.

C. Compliance Schedules and Reports

The Department agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

IV. COMPLIANCE MONITORING

A. General

The Department and the NDGS shall operate a compliance monitoring system to track compliance with permit conditions and program requirements as outlined in the UIC program description. For purposes of this agreement the term "compliance monitoring" or "compliance evaluation" shall refer to all efforts associated with determining compliance with UIC program requirements.

B. Compliance Schedule

The Department and the NDGS agree to maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Department shall initiate appropriate compliance actions and/or enforcement actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Department and the NDGS shall conduct a timely and thorough review of all such reports to determine compliance status. The permitting agency shall operate a system to determine if: (1) the reports required by permits and program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and program requirements are met.

D. Inspection and Surveillance

The Department and the NDGS agree to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the UIC program. Surveys or other methods of surveillance shall be utilized to identify persons who have not complied with permit applications or other program requirements. Any index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Department and the NDGS shall conduct periodic investigations of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions and program requirements. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, verify the accuracy of the information submitted by permittees in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring and other methods to provide information. These inspections or surveys may be announced or unannounced.

E. Information from the Public

The Department and the NDGS shall provide opportunity for the public to submit information on violations, and shall establish procedures for receiving, investigating, and ensuring proper consideration of the information on a case by case basis.

F. Authority to Enter

State officials engaged in compliance monitoring and evaluation have the authority to enter any site or premises subject to regulation, or to review and copy the records of relevant program operations where such records are kept as illustrated in NDCC 61-28-04.

G. Admissibility

Any investigatory inspection shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

V. **ENFORCEMENT**

A. General

The Department and the NDGS are responsible for taking timely and appropriate enforcement action against persons in violation of UIC program requirements, compliance schedules, technical requirements, and permit conditions as described in the

UIC program description. This includes violations detected by state or federal inspections.

The EPA shall be notified of any enforcement actions taken by the Department. Failure by the state to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the state has failed to take timely enforcement action. Such a determination shall result in EPA filing an action to enforce the Department's rules consistent with Section 1423 of the Safe Drinking Water Act.

B. Enforcement Mechanism

The Department and the NDGS shall restrain immediately and effectively any person engaging in any unauthorized activity or operation which is endangering or causing damage to public health or the environment as applicable to the program requirements. The State also has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement as detailed in NDCC Chapter 61-28-04. Enforcement actions as detailed in NDCC 61-28-04 include maintaining actions for damages in the name of the state and to initiate actions in court for the enforcement of Chapter 61-28. Additionally, the State is authorized to sue to recover civil penalties and criminal remedies as established in 40 CFR 145.13 and NDCC 61-28-04.

C. Public Participation

The Department and the NDGS shall provide the public an opportunity to participate in the State enforcement process as specified in 40 CFR 145.13 (d)(2).

VI. EPA OVERSIGHT

A. General

EPA, Region 8, shall oversee the Department's administration of the UIC program on a continuing basis to assure that such administration is consistent with this MOA, the State's UIC grant application, the State/EPA Performance Partnership Agreement (PPA), and all applicable regulations embodied in the current regulations, policies, and Federal law.

In addition to the specific oversight activities listed in this section, EPA may request and the Department shall submit specific information and provide access to files necessary for evaluating the Department's administration of the UIC program.

B. Quarterly Program Reports

The Department shall submit to the Regional Administrator of EPA quarterly program reports as specified in 40 CFR, Part 144.8(a) and as outlined in the UIC Program description and consistent with current UIC Program Guidance.

<u>EPA Form</u>	<u>Description</u>
7520-1	Part I: Permit Review and Issuance/Wells in Area of Review
7520-2A	Part II: Compliance Evaluation
7520-2B	Part II: Significant Noncompliance
7520-3	Part III: Inspections, Mechanical Integrity Testing
7520-4	Part IV: Quarterly Exceptions List

Quarterly reports will be submitted in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrator</u>
October, November, December	January 30
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30

C. Annual Program Reports

The Department shall submit an annual program report as specified by CFR 144.8 and by EPA continuing grant guidance to the Regional Administrator 60 days after end of fiscal year. The report is for the period of October 1 through September 30 (federal fiscal year) and shall consist of the following:

1. A well inventory consisting of the facility name and ID, location, well type, and well status.
2. A written summary of the major program activities completed and in progress during the fiscal year as identified in the work plan.
3. A summary of grant utilization and estimates of expenditures is included in the Department's annual PPA Block Grant end-of-year financial status report (see next item). EPA Form 7520-5 will no longer be used.

D. Financial Status Reports

The Department shall submit a financial status report to the Regional Administrator within 90 days after the end of the Federal fiscal year or expiration of the grant.

E. Major Facilities

Major facilities shall include: All Class I Injection Wells; All Class IV Wells; and All Class III Solution Mining Wells.

F. Review of Permits

The Department shall submit all Class I draft permits and proposed permits to EPA for review which may be prior to issuance. Reviewal of all other UIC permits may be reviewed by EPA upon request to the Department.

G. EPA Inspections of Facilities

EPA may conduct compliance monitoring inspections on a sample of injection wells operating by permit or rule authorization. When possible, the facility inspections will be conducted jointly with the Department. The Department shall give EPA adequate notice to participate in any compliance evaluation inspections scheduled by the Department as needed and/or requested by EPA.

EPA shall notify the Department of any proposed facility inspection within the state of North Dakota at least seven (7) days before any inspection which EPA determines to be necessary. This procedure will allow coordination of scheduling and allow joint inspections. This procedure may be waived for emergency situations.

H. Aquifer Exemptions

After notice and opportunity for public hearing, the Department may designate, identify, and describe in geographic or geometric terms or both, which are clear and definite exempted aquifers or parts thereof using the criteria of 40 CFR 146.4 as stated in the program description.

I. Mechanical Integrity

The Department may allow the use of a test to demonstrate mechanical integrity other than those listed in the program description. Any alternative mechanical integrity test must receive written approval from the Regional Administrator prior to implementation and be consistent with the requirements of 40 CFR 146.8(d).

J. Petitions for Injection of Prohibited Waste

The Department, the North Dakota Division of Waste Management, and EPA will coordinate closely throughout the review process to assure that all state and federal requirements are met concerning Petition Standards and Procedures as outlined in 40 CFR 148.

K. Program Evaluation

EPA shall conduct at least annually performance evaluations of the State Program using the annual State/EPA Agreement work plan, quarterly program reports, annual program reports, and other required and requested information to determine State Program consistency with the program submission, SDWA and applicable regulations, and applicable guidance and policies. The review will not only include a review of financial expenditures, but reviews on progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

EPA shall submit a summary of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations. The report also might provide guidance for the development of upcoming grant application. The State shall have 30 working days from the date of receipt to concur with or comment on the findings and recommendations.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement:

Francis J. Schwindt, Chief
Environmental Health Section
North Dakota Department of Health

Date

Dennis R. Fewless, Director
Division of Water Quality
North Dakota Department of Health

Date

Jack W. McGraw
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 8

Date

